

In re) Fair Hearing No. 11,074
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Appeal of)

The petitioner appeals the Department of Social Welfare's decision finding him ineligible to receive Food Stamps for six months due to an alleged intentional program violation.

1. The petitioner applied for Food Stamps for himself in February of 1992.

2. On February 10, 1992, the petitioner was notified by the Department of Social Welfare that his application had been denied because "he has been disqualified because of an intentional program violation". The petitioner was also advised that "the disqualification period will be for six months starting with the effective date of this action. When the disqualification period ends, this person may become eligible for benefits again."

3. The Department based the intentional program violation on the petitioner's conviction in the Vermont District Court on September 19, 1989 for welfare fraud arising from his wrongful receipt of Food Stamps. As a result of that conviction, he was sentenced to two to three years in prison and ordered to make restitution of \$12,000.00 to the state.

4. The petitioner does not disagree that he was so convicted on that date but argues that he should be found eligible for Food Stamps because his welfare fraud conviction was subsequently purged by the Superior Court on January 13, 1992. In support of his contention, he submitted a copy of the Court's opinion and order which is attached hereto as Exhibit No. 1 and incorporated by reference herein.

5. The seventeen page Court order presented by the petitioner is primarily focussed on the petitioner's request for relief from his guilty plea for a simultaneous charge of sexual assault. However, on page fourteen the Court briefly and specifically addressed the continued viability of the welfare fraud plea and concluded that there was "not a prayer of success of petitioner's claimed violation of V.R.Cr.P. 11(f) in regard to the welfare charge" and that the records "reveal facts sufficient to establish the elements of the crime and an understanding by petitioner of the law in relation to the facts". The Court concluded that the supporting facts on the record were sufficient under the law to support the plea on the welfare fraud charge.

6. The petitioner argues that the general language on page seventeen granting his petition for post-conviction relief is sufficient to find that he was purged of both convictions, although he admits he is only being retried on the sexual assault charge. The petitioner's interpretation, however, is contrary to the specific opposite language on

page fourteen. The Court's order appears to be consistent with the petitioner's petition which, according to page two of the order, only asked for relief as to his guilty plea in the sexual assault charge. It is found based on the above that the decision of the Superior Court dated January 13, 1992, reaffirmed rather than purged his prior conviction for welfare fraud.

7. The petitioner presented no evidence indicating that in its order the Court imposed its own disqualification period or barred the Department from imposing a civil disqualification period.

ORDER

The Department's decision is affirmed.

REASONS

Under the Food Stamp regulations:

Individuals found to have committed intentional program violation either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation, and permanently for the third violation.

. . .

If a court fails to impose a disqualification period for the intentional program violation, the State agency shall impose the disqualification penalties specified in this section unless it is contrary to the court order.

F.S.M. § 273.16(b)

The petitioner has been convicted by the District Court

of Vermont of fraud in the Food Stamp program. The evidence shows that the conviction still stands. The petitioner presented no evidence that the Court imposed or barred imposition of a civil disqualification penalty. As such, it must be concluded that the Department properly disqualified the petitioner for six months from the date of his application for Food Stamps.

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